

June 14, 2023

**WHEREAS**, the City of Dallas ("City") seeks to enter into a ground lease with Cypress Creek Forest Lane, LP (hereinafter "Tax Credit Partnership/Tenant") allowing the Tax Credit Partnership/Tenant to, at their sole cost and expense, design, construct and operate an affordable multifamily development on a tract of land containing approximately 2.85 acres located at 11520 North Central Expressway, Dallas, Dallas County, Texas (hereinafter "the Land") (further described on the attached Exhibit A); and

**WHEREAS**, the City seeks to provide and promote the development of affordable housing; and;

**WHEREAS**, on April 12, 2023, the City Council adopted the Dallas Housing Policy 2033 to replace the CHP by Resolution No. 23-0443, and the Dallas Housing Resource Catalog to include the approved programs from the CHP by Resolution No. 23-0444; and

**WHEREAS**, the Department of Housing & Neighborhood Revitalization continues operating its programs, previously authorized and adopted under the CHP, now as restated in the Dallas Housing Resource Catalog approved on April 12, 2023; and

**WHEREAS**, affordable housing is recognized as a public purpose by the City's Dallas Housing Policy 2033 and Texas state law; and

**WHEREAS**, the City desires to lease the Land to Tax Credit Partnership/Tenant, of up to 2.85 acres of leasable space within the Premises for the exclusive use to operate a mixed-income affordable multifamily apartment complex called Cypress Creek at Forest Lane Apartments (the "Project"); and

**WHEREAS**, Tax Credit Partnership/Tenant is willing to lease the Land, to serve the City's public purpose, and (i) construct the Improvements; and (ii) endeavor to establish the Premises as a mixed-income, affordable housing community; and

**WHEREAS**, Tax Credit Partnership/Tenant intends to develop the Project utilizing low-income housing tax credits provided by the Texas Department of Housing and Community Affairs (TDHCA), commercial debt, and intends to apply for soft debt financing from the City and secured by the Tax Credit Partnership for the Project; and

**WHEREAS**, the City will own the Premises and lease them, for a term of 39 years commencing on the day of the certificate of occupancy, to Tax Credit Partnership for the public purpose of constructing and operating a mixed-income, affordable housing community; and

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**WHEREAS**, the Tax Credit Partnership will be required to consult with the Office of Integrated Public Safety Solutions (OIPSS) for planning and design process for security input, community activities, and incorporate Crime Prevention Through Environmental

Design recommendations. Additionally, the Tax Credit Partnership will be required to provide modern security features to include a full camera system with Dallas Police Department access, controlled access, lighting, a community crime watch program, and participation in National Night Out to ensure a safe living environment for all residents and staff. The lease will be subject to performance measures representing the affordable housing requirements in a typical Low Income Housing Tax Credit Notice of Funding Availability development project whereby the City authorizes gap funding; and

**WHEREAS**, Tax Credit Partnership is willing to accept the Premises, in "as is, where is, with all faults" condition subject to a ground lease, to serve the City's public purpose and use, construct apartments, operate, and maintain the Premises to provide affordable housing; and

**WHEREAS**, on May 10, 2023 the City Council authorized the City Manager to move forward with the closing and acquisition of the Premises by accepting the conveyance from Tenant/Tax Credit Partnership by Resolution No. 23-0641.

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the City hereby identifies a severe lack of affordable housing. The City further finds that mixed-income communities create healthier and more sustainable affordable housing.

**SECTION 2.** That the City hereby establishes as a public purpose the desire to enter into a ground lease to lease the Land to Tax Credit Partnership/Tenant allowing the Tax Credit Partnership/Tenant to, at their sole cost and expense, design, construct and operate the Project as a mixed-income, affordable housing community (hereinafter the "City's public purpose").

**SECTION 3.** That the City Manager is hereby authorized to negotiate and execute a ground lease for a term or 39 years with Tax Credit Partnership/Tenant, approved as to form by City Attorney, allowing the construction and operation of the Project. The lease will be prepared once lenders for the Project are identified and will include commercially reasonable provisions agreed to by the parties and approved as to form by the City Attorney.

**SECTION 3.** (continued)

Some of the salient Lease terms are described below:

1. The lease will set forth the rental terms and detailed performance measures including Tenant reporting and the City audit rights to ensure the City's public purpose is met. The performance measures will be the affordability requirements of the tax credits to be used to construct the Project.
2. The lease will define the terms of development of the Project including time anticipated for construction and placement into service of both the market rate and affordable units in the Project.
3. The City, as landlord, will at all times remain fee owner of the Premises and will have no obligations for the maintenance and operation of the Premises during the term of the lease.
4. The lease between the City, as landlord, and Tenant, shall be for a term of 39 years, commencing on the date of certificate of occupancy (the "Term"). Tenant shall be solely responsible for securing certificate of occupancy. Tenant shall have no right to assign, encumber, or convey the lease contrary to the public purpose without prior written consent of the City which consent shall not be unreasonably withheld.
5. The lease will provide that Tenant will construct 189 units of multifamily residential housing and set aside or rent 40% of the units to tenants whose income is less than 80% of the Area Median Income (AMI) and 10% of the units to tenants whose income is 60% of the AMI (the "Affordable Units"), such AMI shall have a floor no lower than the AMI on the Closing Date. The income and rent limits will be adjusted for family size and bedroom size and rent shall be calculated by using the Novogradac Rent and Income Limit Calculator. The Affordable Units at each AMI level will be spread pro- rata with the overall unit mix between one, two, and three-bedroom units. Once initially qualified, Tenants and their assigned units will remain income restricted so long as they are eligible under LIHTC/TDHCA income guidelines which are monitored annually by city staff for compliance.
6. Tenant will pay the City a one-time structuring fee of \$100,000.00 within 90 days of the City Council approval of the lease in addition to rent of 20% of the total cash flow, commencing six months after the Project stabilizes, which is defined as reaching 90% occupancy (the "rental commencement date"). Rent will be paid annually, in full, on the first of the month following six months after stabilization and every 12 months thereafter. As City-owned property, the Premises are to be exempt from real property taxes during the term of the agreement. In the event the Premises become taxable, the parties reserve the right to renegotiate the rental terms.

**SECTION 3.** (continued)

7. The lease will require the Tenant to maintain the Project as a Class A residential project and will require renovations to the extent financially feasible, to the extent necessary to maintain the Project as a Class A residential project. Tenant will insure the Project and will set aside an amount per door per year as determined by lenders as a reserve for replacements. Tenant will provide full indemnities to the City. Provisions will be negotiated to help the City assure that the Project remains a Class A residential project throughout the Term, including conducting periodic needs assessments by an engineer experienced in such assessments at predetermined intervals, prior to a capital event, and at any point in time when there is a significant negative change in occupancy. For avoidance of doubt, the parties agree that maintaining the Project as a Class A apartment project means keeping the Project as originally designed and constructed in appropriate condition to compete with other Class A residential projects of the same age as the Project, but does not mean adding amenities, making structural or other changes to the exterior or interior of the Project to make it consistent with newly constructed Class A apartment projects at a future date.
8. Within one month after the execution of the lease, Tax Credit Partnership shall at its sole cost and expense, commence design and construction of the Improvements, with completion of the Improvements to be fully accomplished within two years thereafter, subject to extension by mutual agreement of the parties.
9. The lease is eligible for one automatic renewal period of six years.
10. Subject to the City Council approval, at such time as the initial term of 39 years shall expire, Tenant or its assign or designee shall have a one-time option to purchase the Project from the City, subject to and in accordance with the requirements of Texas Local Government Code 272.001 or other law applicable to a conveyance to an entity for the development of low to moderate income housing.
11. The lease will provide that Tenant will defend, with the City's choice of legal counsel, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all claims, lawsuits, judgments, costs, expenses, and damages sought or suffered by any person arising out of Tenant's use of the Premises, as well as against any and all claims, litigation expenses, and/or damages arising out of any of the restrictive covenants attached hereto as Exhibit B.

**SECTION 3. (continued)**

12. The Tax Credit Partnership will be required to consult with the Office of Integrated Public Safety Solutions (OIPSS) for planning and design process for security input, community activities, and incorporate Crime Prevention Through Environmental Design recommendations. Additionally, the Tax Credit Partnership will be required to provide modern security features to include a full camera system with the Dallas Police Department access, controlled access, lighting, a community crime watch program, and participation in National Night Out to ensure a safe living environment for all residents and staff. The lease will be subject to performance measures representing the affordable housing requirements in a typical LIHTC NOFA development project whereby the City authorizes gap funding.
13. Tenant shall be responsible to pay all taxes arising out of the use on the Premises during the lease term. As City-owned property, the Premises is assumed to be exempt from real property taxes. The City and Tenant shall have the right to contest any real property taxes assessed against the Premises.
14. Tenant shall at all times during the term of the lease, maintain in full force and effect adequate insurance, including without limitation worker's compensation, liability and builder's risk insurance, on the Premises, in such form and amounts as the City shall reasonably require, subject to the City's risk management department review and approval. In the event of fire and other casualty loss, Tenant shall promptly repair, restore, and rebuild the Premises to at least its pre-loss condition regardless of the availability of or inadequacy of insurance proceeds, subject to a reasonable period to complete negotiation of a loss claim with its insurer and complete all required repairs to restore the Premises. Failure to repair, restore, or rebuild the Premises to a condition deemed suitable by the City to maintain the public purpose shall constitute a lease default and may cause a termination of the Lease.
15. The Lease shall be subject to a use restriction ("Use Restriction") limiting the use of the Premises to the construction, maintenance, and operation of an affordable housing apartment complex which shall not be materially altered, amended, or discontinued without the prior written consent of the City.
16. During the term of the lease, the lease shall be subject to the City's right of termination and a right of reentry in favor of the City enforcing the Use Restriction and the City's public purpose.
17. The lease will be subject to any and all covenants, conditions, reservations, restrictions, exceptions, easements, rights-of-way, mineral interest, mineral leases, or other instruments of record in the official real property records for the county where the Premises are located effective as to the Premises, or any part thereof, and any and all visible and apparent easements and encroachments, whether of record or not impacting the Premises.

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**SECTION 3.** (continued)

18. The lease will be subject to a reservation by the City of floodway, flood control, drainage or levee easements as reasonably deemed necessary, appropriate or convenient by the City.
19. The lease will be subject to performance and payment bonds as required for any development, design and construction activity undertaken by Tenant and or tenant contractors.
20. Tenant shall be solely responsible for all improvements, repairs, and maintenance to the Premises, at no cost to the city, including all structural, mechanical, and core system functions maintenance, repairs and replacements. The City shall have a right of inspection to ensure compliance with Tenant's maintenance responsibilities set out in the lease.
21. Tenant shall be solely responsible for all operating costs, including all utilities, connection charges, arising out of the Project.
22. Tenant shall be responsible to comply with all applicable law and make reasonable efforts to comply with the City's Business Inclusion & Diversity policies and non-discriminatory housing requirements.
23. All construction plans and specifications for any construction work on the Premises must be reviewed by construction experienced City personnel in the City's Building Services, Planning and Urban Design, Development Services, and Housing & Neighborhood Revitalization Departments and accepted in writing by the Director of Housing or designee prior to commencement of any work.
24. The lease will be subject to such other terms, conditions, waivers and disclaimers as the City deems necessary, convenient or appropriate.

**SECTION 4.** That this Agreement is designated as Contract No.HOU-2023-00022127.

**SECTION 5.** That the Chief Financial Officer is hereby authorized to receive and deposit revenue lease payments in the Lease Revenues Fund, Fund 0764, Department HOU, Unit (TBD), Revenue Code 8483.

**SECTION 6.** That the City Controller is hereby authorized to setup accounts payable for generated receipts from the Property to allow the Housing Department to use funds to address the following:

- a. Public improvements to sidewalks and lighting in the area surrounding the property as recommended by the Dallas Police Department and the Dallas Public Works Department.

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**SECTION 7.** That Tenant shall allocate additional financial resources for recreational uses and park dedication fees for upgrades to nearby parks and consult with the Dallas Department of Parks and Recreation to determine playground equipment needs at Orbiter Park and Willie B. Johnson Recreation Center for the enjoyment of residents and neighbors.

**SECTION 8.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED AS TO FORM:  
TAMMY L. PALOMINO, Interim City Attorney

BY: \_\_\_\_\_  
Assistant City Attorney